

## **Remarks**

### **Status of the Claims**

This paper is filed in response to the Office Action mailed March 19, 2009, in which claims 1-37 were pending in the application. All pending claims stand rejected. By this paper, Applicants respectfully request entry of the proposed amendment to claims 1 and 3 set forth herein, along with the cancellation of claims 2 and 7 requested herein. In addition, new claims 113-117 have been presented herein. For the reasons set forth below, Applicants submit that each of the pending claims is patentably distinct from the cited prior art and in condition for immediate allowance. Reconsideration of the claims is therefore respectfully requested.

### **Examiner Interview Summary**

Applicants wish to express sincere appreciation for the telephone interview granted by Examiner Swiger and conducted on June 23, 2009. During the interview, it was agreed that the pending claim rejections under 35 U.S.C. § 112 would be withdrawn in view of the Examiner's suggested clarifying amendment to claim 1 presented herein. However, Applicants note for clarification purposes that they do not consider the amendment to claim 1 to be a narrowing amendment. More particularly, any "first member" that has "at least a portion" anchored to a bone is necessarily anchored to the bone itself. In other words, if an orthopedic cutting guide device "is configured to be selectively adjusted in both a rotational and translational manner while at least a portion of the first member is anchored to the bone" then it is

necessarily the case that the orthopedic cutting guide device “is configured to be selectively adjusted in both a rotational and translational manner while the first member is anchored to the bone.” Applicants consider the removed language superfluous and unnecessary.

Applicants further note for clarity that they disagree with the Examiner’s suggestion in the Office Action that the previous claim language required any contact between the bone and the first member. To the contrary, “anchoring” does not imply contact (nor does it exclude the possibility of contact though). As also discussed during the telephone interview, support for the previous (and current) claim language can be found in the Application at paragraph 58. (“Once attached to said quick pins 150 and 152, the support member 40 may be in a position of stability and may be fixed to the distal femur. Thus, the support member 40 may act as an anchor to secure the entire A/P cutting guide device 10 to the distal femur.”).

#### Claim Rejections Under 35 U.S.C. § 102

Claims 1-3, 4-6, 11, 25-26, 29, 32, 34 and 35-37 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,952,213 issued to Bowman et al. (“Bowman”). Although Applicants respectfully disagree with the Examiner’s position regarding Bowman, in the interest of avoiding further delay to issuance of the Application, Applicants have amended claim 1, without prejudice to its reintroduction in a subsequent application, to include subject matter that the Examiner has indicated to be allowable, as discussed in greater detail below.

Applicants thank the Examiner for identifying the allowable subject matter of claims 7-10, 12-14, 27-28, 30-31, and 33. Applicants have amended independent claim 1 to include the subject matter of dependent claim 7, which includes the subject matter of dependent claim 2, and have cancelled claims 2 and 7 from the Application.

Applicants have also presented in the Application new claims 113-117, each of which includes what has been indicated to constitute allowable subject matter. New claim 113 includes each of the limitations of the previous version of claim 14, new claim 114 includes each of the limitations of the previous version of claim 16, new claim 115 includes each of the limitations of the previous version of claim 21, new claim 116 includes each of the limitations of the previous version of claim 30, and new claim 117 includes each of the limitations of the previous version of claim 31. Applicants therefore respectfully request withdrawal of the rejection of independent claim 1 under 35 U.S.C. § 102, along with each of the claims depending therefrom. Applicants also respectfully request allowance of new claims 113-117 presented herein.

For at least the foregoing reasons, Applicants respectfully submit that each of the pending claims is in condition for immediate allowance. Applicants reiterate, however, that the remarks and amendments presented herein should not be construed as acquiescence as to the purported teachings and/or characterizations of the cited prior art as set forth in the Office Action. Accordingly, Applicants reserve the right to present the previous claims, or variations thereof, in a subsequent application.

### Conclusion

For at least the foregoing reasons, all claims are patentably distinct from the cited prior art and in condition for immediate allowance. A Notice of Allowance is respectfully requested. Should any further issues remain that would preclude the prompt issuance of a Notice of Allowance, the Examiner is requested to contact the undersigned.

DATED this 9th day of July, 2009.

Respectfully submitted,

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